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SUMMARY RECORD OF THE 8th MEETING

Chairman: Mr. LAMPTEY (Ghana)

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AGENDA ITEM 140: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

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The meeting was called to order at 10.20 a.m.

AGENDA ITEM 140: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/49/33 and A/C.6/49/L.6)

1. Mr. LEGAL (France) said that the work of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization showed what resources the Charter of the United Nations still had to offer, especially in the area of the maintenance of international peace and security. In recent years, the Security Council had shown its capacity to adapt to numerous crises with limited means at its disposal; nevertheless, greater effectiveness must be sought. The Special Committee continued to provide a framework for discussion of ways to achieve that goal and of the proposals contained in the report of the Secretary-General entitled "An Agenda for Peace" (A/47/277-S/24111).

2. With regard to the draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security (A/49/33, paras. 83-89), his delegation believed that its finalization constituted a step towards promoting respect for the spirit of the Charter. Without limiting the autonomy of regional organizations, efforts must be made to define their role in supplementing and supporting the work of the United Nations. The draft declaration provided, in accordance with Article 53 of the Charter, that no enforcement action was to be taken under regional arrangements or by regional agencies without the authorization of the Security Council. The international and regional security systems were thus complementary, not competitive.

3. Turning to the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter (A/49/33, paras. 51-82), he said that the issue should be given priority. While comprehensive measures would probably be required in order to provide an appropriate response to the problems faced by States indirectly affected by sanctions, his delegation did not believe that working paper A/AC.182/L.79, which was reproduced in document A/49/33, paragraph 52, was a step in the right direction. Under Chapter VII of the Charter, the Security Council had a responsibility to take action to maintain or restore peace. The scope of such action could not be weakened by extraneous considerations. Third States had every interest in ensuring that sanctions were applied as strictly as possible. Accordingly, there could be no question of imposing on the Security Council automatic obligations contrary to the spirit of Article 50.

4. The proposals relating to the establishment of an automatic financial mechanism were also highly questionable. The notion of establishing a special trust fund financed from assessed and voluntary contributions could be illusory, taking into account the difficulties of many States in meeting their financial obligations to the Organization. The idea of utilizing existing international financial and economic institutions appeared to be more promising.

5. A better approach would be to develop a methodology for assessing the consequences of sanctions. Such an assessment could be carried out by international financial institutions or by Security Council committees, and its results should be taken into account subsequently by the financial institutions in the formulation of credit policies. A mechanical approach, which would be tantamount to substituting political criteria for the economic objectives of the institutions concerned, should be avoided.

6. The new version of the draft articles entitled "United Nations Model Rules for the Conciliation of Disputes between States" (A/49/33, paras. 102-108) represented such an improvement over earlier versions that it was to be hoped that the Special Committee could complete its consideration of the draft articles at its next session. Likewise, the proposal entitled "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes", submitted by Sierra Leone (A/49/33, paras. 109-111), deserved consideration by the Sixth Committee. The adoption of those instruments would enrich an already extensive body of law whose limitations were none the less illustrated by recurring problems in international relations.

7. His delegation proposed that the Special Committee should be invited to give further consideration at its next session to the question of criteria for the granting of observer status in the General Assembly. If the discussion proved to be too complex for the General Assembly to complete its consideration of the new item before the end of the current session, the Special Committee could provide an appropriate framework for further discussion.

8. Mr. HAMAI (Algeria) said that, as the number of States not members of the Special Committee which had participated in its recent session as observers was almost equal to the number of States members of the Special Committee, and as seven intergovernmental organizations had also participated in some plenary meetings, the question of the membership of the Special Committee should be considered in greater depth.

9. With regard to the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter (A/49/33, paras. 51-82), his delegation welcomed the fact that a single consolidated working paper (A/49/33, para. 52) had been considered by the Special Committee. His delegation was well aware of the complexity of the issue and of the difficulty of establishing suitable and effective mechanisms for providing solutions to the economic difficulties faced by third States affected by Security Council sanctions. Nevertheless, the complexity of the issue should not obscure the legitimacy, from the standpoint of the provisions of the Charter, of the approach taken by the sponsors of the working paper. Article 50 of the Charter authorized any State which found itself confronted with special economic problems arising from the carrying out of measures taken by the Security Council to consult the Council with regard to a solution of those problems. Hence, the Charter not only recognized the right to consult the Council, but also imposed on the Council an obligation to seek solutions to such problems.

10. As unanimous agreement did not yet exist on the specific proposals contained in the working paper, they should continue to be discussed in the light of the report which the Special Committee recommended that the Secretary-General should submit.

11. His delegation welcomed the finalization by the Special Committee of the draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security (A/49/33, paras. 83-89). One regional organization, the Organization of African Unity (OAU), was already making a substantial contribution to several United Nations operations in Africa. The draft declaration being submitted to the General Assembly for consideration and adoption could only strengthen the existing cooperation between the two organizations.

12. With regard to the peaceful settlement of disputes between States, his delegation continued to have doubts about the usefulness of preparing new instruments, especially optional ones, in an area already covered by the relevant provisions of the Charter of the United Nations, provisions which, in turn, were extensively reproduced in a series of other international instruments. Moreover, the Special Committee had, with the assistance of the Secretariat, developed a Handbook on Peaceful Settlement of Disputes which was a comprehensive guide to all methods of pacific settlement.

13. The Special Committee had gradually been diverted from its mandate to the point where, after 19 years of existence, it had achieved only modest results with regard to the strengthening of the role of the Organization and none whatsoever with regard to the Charter of the United Nations. In accordance with Article 109, paragraph 3, of the Charter, a General Conference of the Members of the United Nations for the purpose of reviewing the Charter was to have been held no later than the tenth annual session of the General Assembly. The historic necessity of adapting the Charter to the new international realities had already been translated into practice, albeit in a limited way, in the economic and social fields, and with regard to the revitalization of the work of the General Assembly and the review of the membership and functioning of the Security Council. His delegation believed that the time had come to revitalize the work of the Special Committee so as to render it capable of fulfilling its initial mandate.

14. Mr. WLOSOWICZ (Poland) welcomed the completion by the Special Committee of work on the draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security (A/49/33, paras. 83-89). Despite the increasing importance of the role of regional organizations in the maintenance of international peace and security, it should be borne in mind that if a need for appropriate regional action arose, such action should be consistent with the competence of a particular arrangement or agency and with the relevant provisions of the Charter of the United Nations, particularly Chapters VII and VIII. The text of the draft declaration, which contained references to the relevant provisions of the Charter, sent a clear message to the international

community that the Charter must prevail over any other legal instruments or obligations.

15. The implementation of Articles 49 and 50 of the Charter should be considered in the broader context of the mechanisms provided in the Charter for the maintenance of international peace and security, including preventive and enforcement measures. A solution to the problem of economic losses in third States affected by sanctions should not be treated as a separate and isolated issue. When imposing sanctions on a particular State, the Security Council should take into account the hardship that such sanctions were likely to cause to third States.

16. As one of the sponsors of the working paper submitted to the Special Committee and reproduced in document A/49/33, paragraph 52, Poland believed that the specific proposals which it contained were useful and promising and should be considered together with the additional proposals made during the debate in the Special Committee.

17. His delegation also welcomed the recommendation of the Special Committee contained in paragraph 81 of document A/49/33. The report which the Secretary-General should be invited to submit before the 1995 session of the Special Committee should elaborate on practical aspects of the implementation of the proposals contained in the above-mentioned working paper and any other proposals for providing economic assistance to third States affected by the implementation of Security Council sanctions.

18. His delegation also welcomed the revised version of the draft articles entitled "United Nations Model Rules for the Conciliation of Disputes between States". His delegation saw no difficulty in the proposed Model Rules being adopted in the form of a General Assembly resolution after their final reading at the Special Committee's 1995 session.

19. Poland also welcomed the new proposal submitted by Sierra Leone entitled "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes", which constituted a promising basis for future work.

20. As the United Nations approached its fiftieth anniversary, it seemed appropriate to consider the removal of the so-called "enemy States" clauses from the Charter of the United Nations. The States covered by those clauses had become not only an inseparable part of the democratic world, but also a crucial element of the United Nations system. As a victim of the Nazi aggression which had started the Second World War, Poland considered that it had a moral duty to take the lead in closing that chapter of history. A political decision on the matter could be taken by the General Assembly at the current session. The Assembly could request the Special Committee to submit to it, at its fiftieth session, a proposal for an appropriate legal solution that would not require a substantive revision of the Charter. His delegation had prepared a draft resolution on the subject which it hoped would be supported by other Member States.

21. Mr. THIAM (Guinea) said that the restructuring effort under way within the United Nations must reconcile the need for a more balanced composition with the concern for greater efficiency in United Nations bodies. Improved mechanisms for the maintenance of peace and security and for the prevention and settlement of disputes must take into account the fact that most current conflicts were raging within States and not between States.

22. Increased cooperation between the United Nations and regional organizations was essential. Through preventive diplomacy, regional organizations could promote the establishment of early warning mechanisms to alert the international community to potential trouble spots. The experience of the Organization of African Unity in conflict prevention, management and settlement was a noteworthy example. Chapter VIII of the United Nations Charter provided the legal framework for such efforts, and its improvement would substantially enhance the peace process. A flexible approach to the question of State consent to regional peace-keeping efforts was essential at a time when the stability of some States was so fragile. Regional organizations should be allowed relative autonomy under the Charter, given the need for rapid action to prevent conflicts and restore peace and in the light of the impact of peace-keeping operations on neighbouring States.

23. It was also imperative to adopt measures pursuant to Articles 49 and 50 of the Charter in order to protect third States from the impact of measures taken by the Security Council against other States. His delegation supported the proposal to establish a trust fund to assist third States. A mechanism should also be set up to provide for automatic compensation to adversely affected third States. The participation of all Member States was essential if international sanctions were to prove effective.

24. The Security Council should be enlarged to ensure the equitable geographical distribution of its seats in the interest of universality. The relationship between the Security Council and other principal United Nations bodies should be revised, and the primacy of the General Assembly must be reaffirmed. The Secretary-General should be able to seek the advisory opinion of the International Court of Justice whenever peace was threatened or undermined. Lastly, membership in the Special Committee should be opened up to all Member States.

25. Mr. KOURULA (Finland), speaking on behalf of Denmark, Iceland, Norway, Sweden and his own country, said that the Nordic countries welcomed the increased interest in the work of the Special Committee, for it was only through the sustained efforts of all interested parties that it could live up to the expectations placed in it.

26. He hoped that the Sixth Committee would adopt by consensus the draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security. The declaration spelled out useful measures giving practical expression to the foundation of cooperation laid down in Chapter VIII of the Charter. The Nordic countries would in particular welcome further practical examination of the potential of regional arrangements, such as the Conference on

Security and Cooperation in Europe, to contribute to peace-keeping operations. Due attention should be paid to specific modalities of cooperation spelled out in the declaration, such as information-sharing, the holding of consultations, early detection, the provision of personnel to carry out civilian and military observer tasks and joint fact-finding missions. Efforts should be made on a case-by-case basis to acquire more knowledge of the potential of regional arrangements to complement United Nations activities. The maintenance of regional peace was a two-way process in which both the United Nations and regional bodies acted as contributors and recipients. An effective division of labour could be achieved only by recognizing the particular characteristics of each regional body, the region concerned and the situation at hand.

27. As to the question of the implementation of Article 50 of the Charter, the Nordic countries fully recognized the need to assist third States affected by the application of sanctions and appreciated their determination to comply with such sanctions. The negative consequences could in some cases be alleviated to a certain extent through regular bilateral and multilateral aid and cooperation channels. In other situations mitigation might require a more institutionalized mechanism. The Nordic countries hoped that the new report on the implementation of the Charter provisions related to the specific problems confronting third countries would take into account the report already submitted by the Secretary-General, focus on analysing the proposals made and devote particular attention to their practical implementation. He also noted that a study on the effects of sanctions on vulnerable groups in countries against which sanctions had been imposed had been commissioned by the Department of Humanitarian Affairs, with the collaboration and support of humanitarian agencies.

28. The Special Committee should finalize the draft of the United Nations Model Rules for the Conciliation of Disputes between States at its next session. Their adoption would prove all the more useful since they would have implications both within and outside the United Nations. Lastly, since the mandate of the Open-ended Working Group to consider the question of increase in the membership of the Security Council already covered most of the issues of interest to the Special Committee with regard to the composition of the Security Council, it would be superfluous for the Special Committee to consider the matter further at the current stage.

29. Mr. ODOI-ANIM (Ghana) said that recent developments on the world scene from Europe to Africa had brought into sharp focus the role of the United Nations in the maintenance of international peace and security, whether acting on its own or in cooperation with regional arrangements and agencies. While cooperation with regional organizations derived from Articles 52 to 54 of the Charter of the United Nations, the Security Council had the primary responsibility for maintaining international peace and security. Accordingly, the need for a definition of regional arrangements, their mandates and the scope of their activities must not overshadow the need for the Security Council to respond promptly and effectively to crises.

30. His delegation welcomed the proposed United Nations Model Rules for the Conciliation of Disputes between States and hoped that they would contribute to

the realization of the Organization's potential as a source of rules to which States could turn in seeking to resolve their disputes peacefully.

31. His delegation also noted with satisfaction the Special Committee's work in connection with the ongoing debate over the review of the Security Council's membership and functioning. His delegation hoped that the principle of universality and participation of all States would be taken into account throughout the review process. That would contribute to revitalizing the Council, making it truly universal and enabling it to retain the allegiance of Member States at all times.

32. Mr. MARTENS (Germany), speaking on behalf of the European Union and Austria, expressed the hope that the draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security would be adopted unanimously and emphasized the importance of continued discussion of the subject. Such cooperation must be guided by certain basic principles: the Security Council had the primary responsibility for the maintenance of international peace and security; all regional efforts must be in conformity with the United Nations Charter, in particular, Chapter VIII; and the scope of cooperation should be flexible so as to take into account the circumstances of each specific situation.

33. Citing examples of cooperation between the United Nations and the European Union, he referred, inter alia, to initiatives to bring an end to the conflict in the territory of the former Yugoslavia, the dispatch of observers to Russia to support the parliamentary elections in December 1993, measures to ensure the delivery of humanitarian aid to Bosnia and Herzegovina and to countries in the Middle East, electoral assistance and monitoring in support of South Africa's transition to a multiracial society and ongoing cooperation between the United Nations Protection Force (UNPROFOR) and the European Union in Mostar.

34. The European Union also believed that cooperation and the exchange of information among regional organizations should be intensified. It welcomed improved cooperation between the Conference on Security and Cooperation in Europe and the United Nations Secretariat. The Conference, which had declared itself a regional arrangement within the meaning of Chapter VIII of the Charter, was an indispensable part of the emerging European security structure, and the European Union planned to urge that it be given priority in conflict settlement and prevention within its area and that it be equipped accordingly.

35. Turning to the question of the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, he recalled that the European Union had provided very substantial economic humanitarian assistance to States which had applied for assistance with reference to Article 50 of the Charter and to other States seriously affected by the crisis in the Persian Gulf. Such economic assistance had continued, and was supplemented by bilateral assistance from the States members of the European Union or in support of efforts of international organizations, particularly the international financial institutions. The European Union also provided substantial assistance to

countries particularly affected by sanctions imposed against the former Yugoslavia.

36. When confronting the special economic problems of third States arising from the implementation of sanctions, it was essential to respect the basic principles contained in the United Nations Charter. Effective solutions could best be reached on a case-by-case basis, taking into account the specifics of each situation. The international financial institutions were best placed to advise countries affected by sanctions on how best to counteract their negative effects. The European Union had objections in principle to the proposal to establish a trust fund to assist those countries and felt that such a fund would only duplicate the activities of the international financial institutions. Moreover, in a time of budgetary constraints, it was unlikely that a new fund would prove an effective instrument for resource mobilization. As to the use of trade instruments as a remedy for the negative impact of sanctions on third States, the European Union would continue to consider measures to facilitate exports from affected countries on a case-by-case basis. Any generalized approach should be avoided since it would contravene the principle of non-discrimination and might lead to additional trade restrictions.

The meeting rose at 11.35 a.m.